

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6634

BILL NUMBER: HB 1084

NOTE PREPARED: Apr 1, 2013

BILL AMENDED: Mar 26, 2013

SUBJECT: Various Property Issues.

FIRST AUTHOR: Rep. Burton

FIRST SPONSOR: Sen. Walker

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Homeowner Protection Unit*- The bill provides that the Homeowner Protection Unit (HPU) of the Attorney General's (AG) office shall enforce violations of the statute concerning homeowners associations.

Mortgage Rescue Fraud Protection Act- The bill makes changes to the mortgage rescue protection fraud act to make it consistent with the credit services organization act and the home loan practices act, including providing that the statute of limitations on filing claims runs for five years from the occurrence of the violation and not from the time the home loan is made.

Real Estate License Suspension- The bill allows for suspension of the license of an individual licensed under the real estate licensing law for an emergency period if the licensee has engaged in material and intentional misrepresentations or omissions. (The law currently allows for emergency suspension of the licenses of real estate appraisers only.)

Homeowner Associations- With certain exceptions, the bill requires a homeowners association to: (1) make financial records available for inspection upon written request by a member of the association; and (2) provide all communications concerning a dispute with a homeowner to that homeowner. The bill permits a homeowners association to charge a search fee for time spent on records searches in excess of one hour, not to exceed the lesser of the hourly rate of the person making the search or \$35 per hour. It provides that the homeowners association statute does not abrogate an agreement by a homeowners association to provide additional inspection rights.

Legislative Council- The bill urges the Legislative Council to establish a study committee on the topic of homeowners associations.

Effective Date: July 1, 2013.

Explanation of State Expenditures: (Revised) *Homeowner Protection Unit-* This provision is already carried out by the HPU and should not increase the Attorney General's expenditures.

(Revised) *Homeowner Associations-* The bill would allow a homeowners association to charge a search fee of not more than the lesser of the hourly rate of the person inspecting the financial records or \$35 per hour.

Mortgage Rescue Fraud Protection Act- If more court cases were to occur as a result of this provision, revenue to the state General Fund would increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment Fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

(Revised) *Legislative Council-* This provision would depend directly on future Legislative Council action. An additional interim committee would increase state expenditures. During the 2012 interim, the Legislative Council set interim committee budgets at \$9,500 or \$16,500 (with membership of 16 or more persons).

Explanation of State Revenues: *Mortgage Rescue Fraud Protection Act-* The bill would give the AG additional options for penalties and remedies in cases of deceptive acts under the Prohibited Lending Practices Act. Those options include bringing an action in a court of record under which, the court could assess civil penalties. The maximum civil penalty a court may assess, under current law, is \$10,000 per violation.

Class A Misdemeanor- The bill would add more conditions for which a foreclosure consultant could be charged with a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit or superior court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures: *Class A Misdemeanor-* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Class A Misdemeanor*- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

Mortgage Rescue Fraud Protection Act- If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Attorney General, Real Estate Commission; Legislative Council.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Matt Light, General Counsel, Attorney General's Office.

Fiscal Analyst: Chris Baker, 317-232-9851.